

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

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| FRATERNAL ORDER OF POLICE, LODGE 10, | : | |
| PROBATION AND PAROLE, | : | |
| | : | |
| Charging Party, | : | <u>ULP 07-02-558</u> |
| | : | |
| v. | : | |
| | : | |
| STATE OF DELAWARE, DEPARTMENT OF CORRECTION, | : | |
| BUREAU OF COMMUNITY CORRECTIONS, | : | |
| | : | |
| Respondent. | : | |

ORDER OF DISMISSAL

1. The Delaware Department of Correction, Bureau of Community Corrections (“DOC”) is a public employer within the meaning of the Public Employment Relations Act (“PERA”), 19 Del.C. §1302(p).

2. Fraternal Order of Police, Lodge 10, Probation and Parole (“FOP Lodge 10”) is an employee organization within the meaning of 19 Del.C. §1302(i), and is the exclusive bargaining representative of a bargaining unit which includes all Probation/Parole Officers and Senior Probation/Parole Officers as defined in DOL Case No. 165 for purposes of collective bargaining. FOP Lodge 10 is the certified representative of that bargaining unit in accordance with 19 Del.C. §1302(j).

3. On or about February 21, 2007, FOP Lodge 10 filed an unfair labor practice charge alleging DOC violated 19 DeL.C. §1307 (a)(2), (a)(3), (a)(5) and/or (a)(6).¹

4. On or about March 9, 2007, DOC filed its Answer to the Charge and on March 15, 2007, filed an Amended Answer and New Matter, denying all material allegations of the Charge. The New Matter asserted the Charge should be dismissed because it was untimely or deferred to the parties' contractual grievance and arbitration procedures.

5. On or about March 20, 2007, FOP Lodge 10 filed its Reply to the New Matter denying the charge was untimely and that the dispute is a proper subject for deferral.

6. A probable cause determination was issued by the Public Employment Relations Board ("PERB") on April 27, 2007. A hearing was convened on June 13, 2007.

7. Subsequent to the hearing, the parties engaged in settlement efforts which resulted in the following agreement which was signed by both parties and dated July 11, 2007:

¹ 19 DeL.C. §1307(a): It is an unfair labor practice for a public employer or its designated representative to do any of the following:

- (2) Dominate, interfere with or assist in the formation, existence or the administration of any labor organization.
- (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
- (5) Refuse to bargain collective in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.
- (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

The State of Delaware, Department of Correction (“the State”) and FOP, Lodge No. 10 (“FOP”) hereby agree to resolve the above unfair labor practice charge as follows:

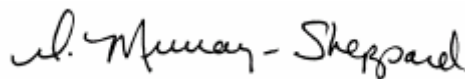
1. Article 9, VACANCIES, §9.2, POSITION CLASS, of the applicable 2002-2005 Collective Bargaining Agreement between the parties defines “Position Class” to mean either Level III and IV as one Position Class; or Level I, II and administrative assignments (e.g. Central Office, Pretrial, Presentence and Work Programs) as a second Position Class. There is no dispute between the parties that Probation and Parole Officers are not, except by mutual agreement of the parties, to be assigned to more than one Position Class under the terms of the current Collective Bargaining Agreement.
2. It is also undisputed that from January, 2005, through the filing of the instant unfair labor practice charge, and for some time thereafter, offenders originally classified as Level II and Level III were assigned to a single Probation and Parole Officer who was responsible for supervising Serious Criminal Offenders in the Kent County Office.
3. The State has in place a procedure for classifying and reclassifying offenders under community supervision. The FOP alleged that the State failed to comply with the requirements of Procedure 5.9, “Offender Classification”, which resulted in the filing of the instant unfair labor practice charge.
4. The State commits to requiring and monitoring compliance with the established procedure in order to prevent a reoccurrence of the situation resulting in the filing of the instance unfair labor practice.
5. It is recognized, however, that at any specific point in time, there may exist periodic but limited exceptions to the general rule that offenders from the two classes of supervision will not be assigned to a single Probation & Parole Officer. The FOP acknowledges that, in the absence of arbitrary and/or capricious conduct by the State, it will be tolerant of such limited exceptions to the agreed upon method of assigning offenders to Probation & Parole Officers for required supervision.
6. This Agreement shall no longer apply if any subsequent collective bargaining agreement modifies or changes the applicable provisions of Article 9, as set forth above.

8. By e-mail dated July 13, 2007, the parties advised the Public Employment Relations Board that they considered the unfair labor practice to be resolved.

WHEREFORE, the Charge is hereby dismissed.

IT IS SO ORDERED.

DATE: 23 July 2007

A handwritten signature in cursive script, reading "D. Murray-Sheppard", is written above a horizontal line.

DEBORAH L. MURRAY-SHEPPARD
Hearing Officer
Del. Public Employment Relations Bd.